

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**Clarion Hotel State Capital
320 Hillsborough Street
Raleigh, NC 27603**

Wednesday, October 15, 2008

Attending:

Commission Members: Richard Brunstetter, M.D., John R. Corne, Dorothy Rose Crawford, Thomas Fleetwood, Michael J. Hennike, Martha Martinat, Connie Mele, Larry Pittman, Pamela Poteat, Jerry Ratley, Don Trobaugh.

Excused Absences: Anna Marie Scheyett, Ph.D., Mazie T. Fleetwood, William Sims, M.D.

Ex-Officio Committee Members: Peggy Balak, Deby Dihoff, Bob Hedrick, Ellen Russell.

Division Staff: W. Denise Baker, Marta T. Hester, Amanda J. Reeder, Tonya Goode, Andrea Borden, Mabel McGlothlen, Art Eccleston, Jim Jarrard, Phillip Hoffman, Stuart Berde, Glenda Stokes, Tracy Ginn.

Others: John L. Crawford, Jennifer Mahaz, Louise G. Fisher, Stephanie Alexander, Jack Register, David Peterson, Joe Donovan, Pamela Cox Fishman, Ann Rodriguez.

Handouts:

Mailed Packet:

- 1) October 15, 2008 Rules Committee Agenda
- 2) July 9, 2008 Draft Rules Committee Minutes
- 3) Proposed Amendment of 10A NCAC 27G .0104 – Staff Definitions
- 4) Proposed Amendment of 10A NCAC 27G .0404 – Operations During Licensed Period
- 5) Proposed Adoption of 10A NCAC 27I .0300 – Designation of Uniform Portal
- 6) Proposed Adoption of 10A NCAC 27 A .0400 – Payment, Reporting and Settlement for LME Systems Management
- 7) Proposed Adoption of 10A NCAC 26C .0700 – Provider Endorsement
- 8) Proposed Amendment of 10A NCAC 27G .0504 – Client Rights
- 9) Proposed Amendment of 10A NCAC 27G .0810 - .0812 – Panel Appeals

Additional Handouts:

- 1) Comment Grid for Rules Submitted for October 15, 2008 Meeting
- 2) Revised 10A NCAC 27A .0404 – Payment, Reporting, and Settlement for LME Systems Management
- 3) N.C.G.S §122C-151.4, Appeal to State MH/DD/SA Appeals Panel

Call to Order:

Due to Dr. Scheyett's absence, John R. Corne, Chairman of the Commission, facilitated the Rules Committee meeting. The meeting was called to order at 9:40 a.m.

Chairman Corne asked that everyone take a moment of silence and reflect on the work that would be performed today. He then issued the Ethics Reminder.

Chairman Corne announced that effective January 1, 2009, the Commission would no longer be utilizing *Ex-Officio* Committee Members. Chairman Corne stated that he would still like for the individuals to participate in the proceedings of both committees by attending and offering opinions. Chairman Corne added there is no statutory authority for such positions. Chairman Corne further stated that he would be sending out a letter to confirm this information. He then thanked the *Ex-Officio* Committee Members for the work that they have performed in the past.

Chairman Corne informed all *Ex-Officio* Committee members that they would be eligible to continue to receive the packets via electronic mail. He instructed those interested in receiving the emails to make the request by giving their email address to staff. Chairman Corne stated that the intent of his decision was not to prevent disseminating the information to *Ex-Officio* Committee members.

Approval of Minutes

Upon motion, second and unanimous vote, the Rules Committee approved the minutes of the July 9, 2008 Rules Committee Meeting.

Proposed Amendment of 10A NCAC 27G .0104 – Staff Definitions

Dr. Art Eccleston, Clinical Policy Specialist, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .0104 – Staff Definitions. It is proposed that the above rule be amended to: 1) establish a Licensed Clinical professional category for the MH/DD/SA system; and 2) update licensure and certification information related to substance abuse. The proposed language was presented to the Rules Committee for approval and recommendation to the Commission for final review.

Dr. Eccleston addressed the comments received during the comment period and reviewed the comment grid referencing the Division's response to those comments.

Dr. Eccleston received the following questions and comments from the Rules Committee members regarding this rule:

- Dorothy Crawford, Committee member, asked about the process of licensure when professionals are recruited from out of state.
 - Chairman Corne responded that, absent a comity agreement, all the licensed occupations and specialties have to take an exam and be licensed.
 - Dr. Eccleston agreed and further stated that Medicaid requires all practitioners who bill directly to the Centers for Medicare and Medicaid Services (CMS) be licensed in this State and have a Medicaid number.
 - Connie Mele, Committee member, indicated that temporary nursing licenses may be obtained within 30 days if a comity agreement is in place.
- Don Trobaugh, Committee member, commented on .0104 regarding Associate Professionals ("AP") and Qualified Professionals ("QP"), and stated that it seemed that the nurse would be equal to or less than the person who has a bachelor's degree; he felt that requiring nurses to be supervised for four years was unnecessary. Mr. Trobaugh

questioned why nurses would be supervised longer than those with bachelor's degrees. Mr. Trobaugh added that someone who had been through the nursing program, which is quite stringent in North Carolina, would have the capacity in two years to gain the same experience as somebody with a bachelor's degree. Further, Mr. Trobaugh commented that the term "experience" is not defined adequately in the rule, and should be clarified in order to ensure there are no issues due to uncertainty.

- Dr. Eccleston stated the amendment was proposed for this meeting is the addition of the definition for licensed clinician.
- Stephanie Alexander, Chief, Mental Health Licensure and Certification Section, NC Division of Health Service Regulation, introduced herself to the Committee and stated that her agency has regulatory oversight over all of the licensed mh/dd/sa providers. Ms. Alexander continued by stating that their surveys are done across the state and that the agency has extensive experience looking at Associate and Qualified Professionals. Ms. Alexander stated that their reading of the definitions is that a registered nurse, as used in the definition of QP, is someone who has a degree in a field other than human services and therefore, it is consistent for a graduate of college or university with a bachelors degree in a field other than human services who needs to have four years of experience with mh/dd/sa populations. Ms. Alexander further stated that they see a lot of registered nurses presenting themselves as "Qs" who do not have the experience necessary to work with these populations. Therefore, as a regulatory agency, DHSR thinks that this rule is sensible and consistent.
 - Chairman Corne asked what exactly Ms. Alexander was referring to when stating a degree in human services. Ms. Alexander replied that there is a problem with this as there has been inconsistent feedback from the Office of State Personnel of what is a human service field.
 - Jim Jarrard, Team Leader, Accountability Team, NC DMH/DD/SAS, stated that the Office of State Personnel did send out guidelines a number of years ago; however, these guidelines have not been revised, nor does the Office of State Personnel claim them to give absolute guidance. Mr. Jarrard further stated that in the absence of any other guidance, the Division has looked at this for years and actually has it as a footnote in some of their documentation. Mr. Jarrard reiterated what Dr. Eccleston presented to the Committee at the meeting was introducing the licensed clinician to the vernacular.
 - Connie Mele, Committee member, clarified that nurses typically have a two, three or four year degree and all of them sit for the same board. They take the same exam in order to become Registered Nurses. Ms. Mele further stated that there has been a change over the last five years in the nursing school curriculum, and many programs removed their psychiatric nursing rotation, eliminating students' opportunity to spend six, seven or eight weeks specifically on psychiatric nursing. Thus, students do not necessarily have experience dealing with the mh/dd/sa population.
 - Jerry Ratley, Committee member, suggested that a footnote or reference in parenthesis after experience be added that will refer them back to a document of guidance that is the most current and can spell out what experience is considered within the definition.

- Chairman Corne stated that if registered nurses were going to be supervised by a QP with the population served, then it would seem the “experience” within the rule is going to be with the population served.
- Ellen Russell, *Ex-Officio* Committee member, stated that there seems to be a string of criteria in the area of substance abuse, but not for an associate professional for developmental disabilities or mental health.
 - Dr. Eccleston stated that there has been an effort in North Carolina to professionalize the providers of substance abuse services and this was an attempt to address this effort.
- Mr. Jarrard stated that the staff qualifications workgroup is still working on these definitions and will be developing something later that address competencies.

Upon motion, second, and majority vote, the Rules Committee voted to approve the recommendation of the amendment to the full Commission for final review with one vote opposed (Don Trobaugh).

Proposed Amendment of 10A NCAC 27G .0404 – Operations During Licensed Period

Stephanie Alexander, Chief, NC Division of Health Service Regulation, Mental Health Licensure and Certification Section, presented the amendment of 10A NCAC 27G .0404 – Operations During Licensed Period. This rule is intended simply to clarify and make technical corrections based on changes to the statute in 2005. This rule reflects those changes that include: 1) revisions to the licensure and renewal period; 2) addition of a requirement to post the DHSR complaint hotline number in each residential facility; 3) deletion of outdated requirements related to inspections; 4) revisions to the requirements concerning facility changes; 5) addition of a requirement prohibiting renewal of a license for facilities that have served no clients during the previous 12 months; 6) the addition of requirements mandating inspection of 24-hour facilities an average of once every 12 months not to exceed 15 months; and 7) revisions of submission requirements prior to licensure renewal.

This is a Secretary rule and was presented to the Committee for information and comment. Therefore, no action was required by the Committee.

Proposed Adoption of 10A NCAC 27A .0400 – Payment, Reporting and Settlement for LME Systems Management

Phillip Hoffman, Chief, NC DMH/DD/SAS, Resource and Regulatory Management Section, presented the adoption of 10A NCAC 27A .0400 – Payment Reporting and Settlement for LME Systems Management. Mr. Hoffman stated that there are two streams of funding that the Division sends to the LMEs: service funds and administrative (or LME Systems Management) funds. Mr. Hoffman emphasized that the proposed rule was not regarding service funds, but administrative, or the LME Systems Management funds, for the governance, operation of the board, provider recruitment, customer service, etc. Mr. Hoffman stated that the rule clarified the Division will settle the LME Systems Management Payments on an annual basis, and Section .0404 of this rule describes the methodology that will be used. Mr. Hoffman also addressed the comments received from the NC Council on his rule during the 60 day comment period.

This is a Secretary rule and was presented for information and comment. Therefore, no action was required by the Committee.

Proposed Adoption of 10A NCAC 26C .0700 – Provider Endorsement

Mabel McGlothlen, LME Systems Performance Team, NC DMH/DD/SAS, presented the adoption of 10A NCAC 26C .0700 – Provider Endorsement. These rules establish the requirements for providers that seek to provide mh/dd/sa services. Provider endorsement is intended to ensure the following: 1) that providers are in compliance with state and federal regulations; 2) there are quality services; and 3) the providers are competent to provide Medicaid services. The Commission has rulemaking authority over this rule and it is being presented today to the Rules Committee for approval and recommendation to the Commission for publication.

Ms. McGlothlen stated that this was the third presentation of this rule. The first presentation was February 2007, and at that time, they were Secretary rules. The second presentation was October 2007, following a statute change and the Commission gained rulemaking authority.

Ms. McGlothlen stated that the concern in the past with these rules has been the endorsement process and the continuing evolution of the endorsement policy. These rules have been written in a manner to set a solid base for the endorsement policy and process so that the policy can be revised from a basic set of rules.

Ms. McGlothlen received the following questions and comments from the Rules Committee members regarding this rule:

- Chairman Corne asked if N.C.G.S. Chapter 150B (The Administrative Procedure Act) applied to the appeal rights under these rules.
 - Denise Baker, Team Leader, Division Affairs, NC DMH/DD/SAS, responded that there were different mechanisms of appeal. The community support service provider has a specific avenue of appeal directly to the Department via recent legislation. N.C.G.S. §122C-151.4 was changed and this change speaks directly to appeals of denials of endorsement. Ms. Baker further stated that the question is still outstanding how the appeals for withdrawals of endorsement are going to be handled. Ms. Baker stated that the Division had been previously advised by the Attorney General's office that provider endorsements and withdrawals of endorsement could not be appealed through our appeal panel procedure or to the Office of Administrative Hearings. At this time, they are seeking additional clarification on this, but it still remains uncertain.
- Michael Hennike, Committee member, asked if there was a timeframe in place for the endorsing agency to notify the provider organization of the status of the endorsement.
 - Mrs. McGlothlen responded that it was in the policy.
- Dr. Richard Brunstetter, Committee Member, inquired if the policy listed in Rule .0705, Plan of Correction, would ensure quality. He was concerned that the new requirements would allow for agencies to operate nearly three years below expectations and then close for failure to meet the new requirements without implementing corrections.
- Chairman Corne asked if providers would be grandfathered in, and thus be able to continue to provide services pending endorsement under the proposed rules, or would they need to stop providing services pending endorsement.

- Mrs. McGlothlen responded that when the endorsement process started in 2005 there was a transition period for providers that were already doing business. During an 18 month transitional period, they phased in providers. In 2005 they did training across the state, so the providers are aware of endorsement and know the requirements as do the LMEs.
- Chairman Corne asked if this would change the current endorsement process. Ms. McGlothlen responded that it would not, as this rule change would support the policy that has been in effect since 2005. Chairman Corne asked if any reapplication would be necessary once approved, and Mrs. McGlothlen responded affirmatively, stating that there was a reapplication requirement every three years.
- Bob Hedrick, *Ex-Officio* Committee member, introduced himself as the Executive Director of the NC Providers Council, and stated that his group had several specific changes they would address in the public comment period, including Rule .0708 and the section that discusses provider application. Mr. Hedrick stated that this is an issue that had been reviewed previously in rules and stated that a not for profit doesn't really have an owner. Mr. Hedrick continued by stating that what would be important is to ensure that any provider, whether for profit or not for profit, would have to fulfill the same kinds of requirements. The word "owners" would only indicate a for profit agency.
 - Chairman Corne stated that "not for profit" corporations are owned by the corporation itself.
- Michael Hennike, Committee member, inquired if the Division has had experience to date with providers losing their endorsement. Ms. McGlothlen stated that it has occurred. Mr. Hennike then asked if there is anything that prevents a provider from restructuring and getting back into the business after having lost their endorsement. Ms. McGlothlen responded that if they lose their endorsement due to business verification they have to wait six months to apply anywhere in the state; if it is a site or a service violation, they can go to another LME and apply for that same site and service. Mr. Hennike then requested a copy of the application for LMEs at the full Commission meeting in November, and Ms. McGlothlen agreed to provide the same.

Upon motion, second and majority vote, the Rules Committee approved the recommendation of the proposed adoption to the full Commission for publication.

Proposed Amendment of 10A NCAC 27G .0504 - Clients Rights

Stuart Berde, Team Leader, Customer Service and Community Rights, NC DMH/DD/SAS, presented the proposed amendment of 10A NCAC 27G .0504 – Client Rights. The amended language is necessary to update the rule to conform to current developments in Mental Health Reform.

Mr. Berde addressed the comment grid in regards to the comments that his rule received. This is a Commission rule and was presented to the Rules Committee for approval and recommendation to the Commission for final review.

Mr. Berde received the following questions and comments from the Rules Committee members regarding this rule:

- Don Trobaugh, Committee member, asked why the Committee should not act upon the comment from the Clients Right Committee of Johnston County MH Center. That comment stated their recommendation that the composition of the committee should be comprised of 60% of individuals who are either consumer or family members.
 - Mr. Berde stated this was a work group made rule and at the last Commission meeting considerable discussion was made to make it 50%. Mr. Berde further stated that changing to 60% would be considered a substantial change to the rule. Mr. Berde added by stating that it was the judgment of the Commission members at the last meeting to go 50% and the staff implemented what the judgment of the Commission was at the last meeting. Finally, Mr. Berde pointed out the current proposed language stated “at least 50%”, allowing local committees to set a higher percentage for consumers or family members.
 - Chairman Corne stated that he did not feel the Committee was in a position to change the recommendation that came down from the last Commission meeting and its members, especially as such change would constitute a substantial change to the rule and thus, prevent the rule from taking effect for quite some time.
 - Bob Hedrick, *Ex-Officio* Committee member, commented that it is not easy operate a client rights committee. Mr. Hedrick further stated that he was very supportive of the changes in the rule. Mr. Hedrick stated that these individuals were volunteers and it has been very difficult to get attendance, so the compromising language was designed to ensure a good balance of having at least 50% of the board be comprised of consumers.
- Dr. Richard Brunstetter, Committee member, asked if there was a requirement for reporting by the LME client rights committee to the LME Board.
 - Mr. Berde affirmed that is required by the rule.

Upon motion and second, and majority vote, the Rules Committee voted to approve the recommendation of the amendment to the full Commission for final review with one vote opposed (Don Trobaugh).

Proposed Amendment of Panel Appeals 10A NCAC 27G .0810 - .0812

W. Denise Baker, Team Leader, Division Affairs Team, NC DMH/DD/SAS, presented the amendment of Panel Appeals 10A NCAC 27G .0810 - .0812. The proposed amendments further clarify the Administrative Review and Hearing procedures involved in processing appeals to the State MH/DD/SA Appeals Panel. The proposed amendments also clarify the timeframes involved. This is a Secretary rule and was presented to the Rules Committee for information and comment.

Ms. Baker received the following questions and comments from the Rules Committee members regarding this rule:

- Don Trobaugh, Committee member, asked why the date of service upon the Secretary was defined as the date received, rather than the date the request for appeal was sent.
 - Ms. Baker responded that it was necessary to ensure uniformity of the appeals procedure, as tracking the mailing date of the requests is very difficult.

- Bob Hedrick, *Ex-Officio* member, inquired whether the Chairperson would break a tie by the two person panel.
 - Ms. Baker responded that it is a three member panel; decision is by majority vote.
- Michael Hennike, Committee member, asked if all appeals that were submitted were heard, or if there was a procedure in place to screen out frivolous appeal requests.
 - Ms. Baker responded that when they receive an appeal request they look at it in light of the statutory requirements; a copy of the contract must be included with the appeal. If the appellant does not have a contract with the LME, then they do not have the ability to appeal, unless they have an application for endorsement which has been denied.
- Ms. Baker added that this process does not address withdrawals of endorsements at this time. The Division is still waiting for clarification from the Attorney General's Office on how they will proceed regarding such withdrawals.
- Dr. Richard Brunstetter, Committee member, asked if a large number of these appeals are currently backlogged in the system in the wake of Community Support appeals.
 - Ms. Baker stated that there were separate types of appeals and she wanted to clarify that she was presenting a rule relating to appeals for adverse decisions by area authorities or county programs. There are a number of Community Support services appeals that are related to consumer services and then there are a number of Community Support appeals that relate to provider appeals; however, neither of these are covered by this particular process.
- Dr. Brunstetter asked if there was a further appeal after the decision of the panel.
 - Ms. Baker stated that the hearing decision can be appealed to the Office of Administrative Hearings. This step would exhaust the administrative appeals process; however, appellants could choose to proceed to judicial appeals in Superior Court.

Chairman Corne informed the Rules Committee that he has tasked the Advisory Committee to work on the Death Incident Report to the legislature from the Commission. Chairman Corne stated that the report was due November 1, 2008; however, he requested, and the Commission received, an extension on the report until December 1, 2008.

The proposed adoption of Rule 10A NCAC 27I .0300 – Designation of Uniform Portal was not discussed.

Public Comment

There were no comments received from the public.

There being no further business, the Rules Committee meeting adjourned at 1:27 p.m.